

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: INCRETIN MIMETICS
PRODUCTS LIABILITY
LITIGATION } MDL Case No.13md2452 AJB (MDD)
 } As to all related and member cases
 } ORDER FOLLOWING July 1, 2014
 } CASE MANAGEMENT
 } CONFERENCE }

On July 1, 2014, the Court held a Case Management Conference to address remaining issues following the May 28, 2014 Case Management Conference as well as issues raised by the Parties in their Joint Agenda. The following is a summary of the proceedings.

1. The Parties have agreed to a February 28, 2014 data end-point with respect to Defendant Eli Lilly and Company.
2. Defendants have agreed to certify complete production of “FDA files” as defined and outlined by the Court’s March 25, 2014 Order. (Doc. No. 377.) Defendants Merck and Novo Nordisk Inc. have submitted certifications in compliance with this Courts June 3, 2014 Order. (Doc. No. 469.) Defendant’s Amylin and Eli Lilly are still two weeks and four weeks, respectively, away from complete production. Certification as to completeness from these Defendants will be forthcoming.

- 1 3. As to verification of completeness for interrogatories and document re-
- 2 quests, the Court will view those as complete as of the date of the verified
- 3 responses.
- 4 4. The Parties are unable to agree upon a discovery schedule for preemption
- 5 and general causation. Accordingly the Court **ORDERS** as follows:
- 6 a. Depositions of custodians that have been identified will com-
- 7 mence on **September 2, 2014** and will be completed by **Octo-**
- 8 **ber 14, 2014**¹;
- 9 b. Plaintiffs' disclosure of experts and their reports pursuant to
- 10 Fed. R. Civ. P 26(a)(2)(A through C) must be filed and served
- 11 by **November 17, 2014**;
- 12 c. Defendants' disclosure of experts and their reports pursuant to
- 13 Fed. R. Civ. P 26(a)(2)(A through C) must be filed and served
- 14 by **December 17, 2014**;
- 15 d. Plaintiffs' rebuttal reports must be filed and served by **January**
- 16 **30, 2015**; and
- 17 e. Deposition of experts must be completed by **March 6, 2015**.
- 18 f. At a future conference, the court will set a hearing and briefing
- 19 schedule for the summary judgment on preemption. Following a
- 20 decision on preemption, summary judgment will be scheduled on the
- 21 issue of general causation if necessary.
- 22 5. If Plaintiffs demonstrate that there are issues with regards to completeness
- 23 of Defendants production on information relevant to the preemption and
- 24 general causation issues at the next Case Management Conference on
- 25 August 14, 2014, the Court will consider amending the above scheduling
- 26 order.

¹ Thirty-five total with ten (10) from Merck, ten (10) from Eli Lilly, seven (7) from Novo Nodisk, and eight (8) from Amylin.

1 Counsel are reminded of the limited scope of discovery in the case at this
2 stage on these preliminary issues. As the Court has previously stated, these
3 issues are,

4 “ . . . a matter of science, and therefore, scientific documents
5 and/or scientific evidence frame the universe of contemplated
6 discovery. Without a scientific basis for the claim that the
7 pharmaceuticals at issue cause pancreatic cancer there is no
8 other way to prove or disprove Plaintiffs’ claims. As a result,
9 permitted discovery includes actual scientific evidence such
10 as animal studies, clinical trials, epidemiologic data, adverse
11 event reports, and submittal documents to scientific and
12 government organizations including the FDA and EMA
13 with regard to the causal link in dispute in this case.” (Doc. No. 377)

- 14 6. The Parties are still in the process of drafting a deposition and privilege
15 protocol and have represented that they anticipate submission of final
16 versions to the Court soon. There may be a few adjustments needed in light
17 of the schedule created by the Court. The Court will intervene if the Parties
18 are unable to resolve certain disputes.
- 19 7. The Parties are in the process of completing a notice provision to add to the
20 Protective Order.
- 21 8. The Parties are in the process of drafting a proposed Decedent Estate
22 Stipulation allowing the Court to appoint interim estate representatives for
23 purposes of this litigation. The Court urges the Parties to continue their
24 efforts and to contact the Court if issues arise in the interim. Upon further
25 reflection, the Court would view Defendants’ twelve month sunset provi-
26 sion as superior. Otherwise, Plaintiffs might delay necessary probate and
27 estate proceedings to their detriment.

- 1 9. There are currently fifty-five cases in which the alleged injury is thyroid
2 cancer. These cases have been consolidated outside of the MDL. Though
3 these cases are not part of the MDL, all Parties anticipate that many proto-
4 cols in the MDL will be utilized. Counsel for the Parties are currently
5 drafting Master Pleadings. The Court will stay answers until the Master
6 Pleadings are in place.
- 7 10. From a request by the Parties and for good cause shown, the Court will
8 relieve the Parties from the 45-day Rule as it relates to discovery motions
9 before Magistrate Judge Dembin. Given the voluminous production of
10 documents in this MDL, the Court will instead utilize a more flexible
11 “reasonable diligence” standard. However, the Court will strictly require
12 the Parties to exercise reasonable diligence and will not tolerate deliberate
13 delay.
- 14 11. This Court will undertake discovery motions on issues that relate directly to
15 preemption and general causation in an effort to facilitate the forward
16 progression of this case. This Court is best suited to handle such discovery
17 matters due to the direct supervision and involvement thus far. The Parties
18 are relieved of their five (5) page limit restriction. Counsels should meet
19 and confer on logistics, including page limits and call the Court to set a
20 hearing date.

21 The next Case Management Conference is scheduled for August 14, 2014 at 9:00
22 am. At approximately 9:00 am, the Court will meet and confer with members of Plain-
23 tiffs’ Lead and Liaison Counsel and Defendants’ Steering Committee in chambers. This
24 informal meeting will be followed by an on the record session beginning at approxi-
25 mately 10:00 am in Courtroom 3B. The parties may appear in person or telephonically
26 for the July 1, 2014 conference. Any call-in instructions, topics for discussion, and a list
27 of the individuals who will be appearing telephonically must be submitted to the Court
28 via e-file no later than August 11, 2014.

1 IT IS SO ORDERED.
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3 DATED: July 1, 2014


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5 Hon. Anthony J. Battaglia
U.S. District Judge

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